Learning Workshop on Women, Land and Housing Rights: Assessing the impacts of dispossession
27–29 August 2020
Harare, Zimbabwe
What/who is the State?

• Distinct land / territory
• Population (people/peoples)
• Public institutions, including government recognized by other states

Convention on Rights and Duties of States (“Montevideo Convention, inter-American), 26 December 1933, 49 Stat. 3097, Treaty Series 881:

Article 1:

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.
Rights of Victims to Remedy and Reparations
Two types of victim

Victims of crime:

A person who is suffering from harm, including physical or mental injury, psychological suffering, economic loss, or any damage to the essence of his/her fundamental rights as a result of an act or of negligence that constitutes a violation of the criminal laws in force within the State, including laws that prohibit the abuse of power that amounts to crime.
Two types of victim

Victims of a human rights violation:

A person who has suffered, including physical or mental injury, psychological suffering, economic loss or any damage to the substance of his/her fundamental rights through an act or omission that is a violation of internationally recognized human rights standards.
Sources in Law

Treaty law:

- ICCPR, Article 2 (legislative provisions)
- ICERD, Article 6 (protection and remedies)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 14 and 22 (1984)
- CRC, Article 39 (recovery and reintegration)
- The Hague Convention, Article 3 (compensation)
- GVA Conventions, OP1, Article 91 (compensation)
- Rome Statute of the ICC, Articles 68 (appropriate protective measures, security arrangements, counselling and assistance) and 75 (reparations)
Source in law

Declaratory law:

- Universal Declaration of Human Rights, Article 8 (right to an effective remedy)
- Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
Reparations in International Law

- Traditionally, wrongful acts and ensuing reparations were dealt with as a matter of interstate responsibility (Chorozow Factory Case).
- Progressive recognition that the victims of human rights violations have the right to pursue their claims for redress and reparations before national justice mechanisms (and if needed, before international forums).
Forced Evictions

UN CHR 1993/77, “forced eviction” (1993)

1. **Affirms** that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;
Resolution adopted by the General Assembly

[on the report of the Third Committee (A/60/509/Add.1)]

60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
Restitution:
- Return,
- Resettlement,
- Rehabilitation: all aspects;
Compensation;
Nonrepetition;
Satisfaction.
A Handbook on

UN Basic Principles and Guidelines on Development-based Evictions and Displacement

Amnesty International India
Housing and Land Rights Network
Youth for Unity and Voluntary Action
Challenges

➢ Financing reparations
  - Political constraints as significant as economic
  - Two models—trust funds or introducing a dedicated line in the yearly national budget

➢ Interpreting reparations benefits – linking reparations and other justice measures
  - Reparations should be linked to other TJ measures; i.e., criminal justice, truth telling
  - Such connections provide incentive to interpret the reparations benefits in terms of justice, rather than as an exchange of money for appeasement

➢ Linking reparations programmes to civil litigation
  - Judicial resolution of individual reparations cases often catalysed the willingness of the governments to establish massive reparations programmes
  - Some programmes have been final and foreclosed other avenues of civil redress (Germany)
  - The victims access to courts should be preserved

➢ Making a reparations programme a gender sensitive
Reparation

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